The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER J. LANG,
ROBERT E. CHALSTROM and
MELVIN BRENT WILKINS

Appeal No. 2005-0337
Application No. 09/552,060

ON BRIEF

Before: SAADAT, MACDONALD and NAPPI, Administrative **Patent Judges**.

NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1, 7 and 8.[1] For the reasons stated *infra* we will not sustain the examiner's rejection of these claims.

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[1] We note that the notice of appeal identifies claims 1, 6, 7 and 8 as appealed. However, appellants do not include claim 6 in the briefs, accordingly we dismiss the appeal of claim 6.

Invention

The invention relates to a method for displaying images on a web page at a constant size independent of screen resolution and independent of the physical screen size, by determining the screen resolution and screen size and then scaling the image to maintain the correct size. See page 3 of appellants' specification.

Claim 1 is representative of the invention and reproduced below:

> 1. A method of displaying an image in a web page, comprising the steps of:
> embedding a program in the web page that, when launched, determines the physical size of the display and the current resolution of the display;
> determining the desired physical size of the image to be displayed;
> displaying the image at the desired physical size.

References

The references relied upon by the examiner are:

Harter et al. (Harter)	6,212,564	Apr. 03, 2001 (filed Jul. 01, 1998)
Moore et al. (Moore)	6,310,601	Oct. 30, 2001 (filed May 12, 1998)

Rejection at Issue

Claims 1, and 6 through 8 stand rejected under 35 U.S.C. § 103 as being obvious over Moore in view of Harter. Appellants have not included claim 6 in the briefs, accordingly the appeal of claim 6 is dismissed and we will only

consider the rejection of claims 1, 7 and 8. Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

Opinion

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellants and the examiner, and for the reasons stated *infra* we will not sustain the examiner's rejection of claims 1, 7 and 8 under 35 U.S.C. § 103.

Appellants assert, on page 5 of the brief, that claims 1 and 7 require a program that "determines the physical size of the display." Appellants argue:

> The prior art cited does not teach determining the physical size of the display. Harter does disclose determining the screen resolution, the image color and depth, but does not disclose determining the physical size of the display. The examiner states that it would have been obvious to determine the physical size of the display once the screen resolution has been determined because "the resolution of the display is directly proportional to the physical size of the display." (Citation omitted). This is clearly a mischaracterization of the prior art. The resolution of a display

> is independent of the physical size or the display. The same display can be used at may different resolutions, for example 640 by 480, and 1024 x 1280. Both of these display modes use different screen resolutions for the same physical monitor. The resolution of the display is independent of the physical size of the display. (Pages 5 and 6 of brief).
>
> The examiner states in response, on pages 7 and 8 of the answer:
>
> Since Applicant fails to disclose how to measure the physical size of the display or how to measure the physical size of the pixel, one of ordinary skill in the art must realize that the number of pixels by pixels, i.e. the resolution is the physical size of the display screen. Naturally, one easily realizes that what [is] important is the number of pixels that determine the physical size of the display screen. Now, Moore clearly teaches that the size of [the] image is based on the number or pixels (column 5, lines 29-31). Therefore, Moore does disclose the steps of: determining the desired physical size of the image to be displayed (Fig. 3, steps 305-309); and displaying the image at the desired physical size, i.e. the desired number of pixels (col. 5, lines 18-33).

We disagree with the examiner's interpretation of the claim limitation "physical size of the display" or "physical size of the image." In analyzing the scope of the claim, office personnel must rely on the appellants' disclosure to properly determine the meaning of the terms used in the claims. ***Markman v. Westview Instruments, Inc.***, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word in a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" (emphasis original) ***In re Cruciferous Sprout Litigation,*** 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing ***Intervet America Inc v. Kee-Vet Laboratories Inc.*** 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)).

"[T]he terms used in the claims bear a "heavy presumption" that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Texas Digital Sys, Inc. v. Telegenix, Inc.,*** 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002). "Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." ***Texas Digital Systems, Inc. v. Telegenix, Inc.,*** 308 F.3d at 1204, 64 USPQ2d at 1819 (Fed. Cir. 2002). ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty."); ***Id.*** (citing ***Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (C.C.P.A. 1958) ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")).

Claim 1 includes the limitation of a program that "determines the physical size of the display and the current resolution of the display." Thus, claim 1 makes a differentiation between resolution and physical size of the display.

Claim 7 includes similar limitations. The Microsoft Press Computer dictionary[2] defines resolution as:

> [t]he clarity or fitness of detail attained by a monitor or a printer in producing an image. In relation to computer monitors, resolution is defined as the number of pixels per unit of measurement (such as inch or centimeter) on a video display. The word *resolution* is commonly used to denote the total number of pixels displayed horizontally or vertically on the video display.

Defining resolution as number pixels displayed horizontally and vertically on a monitor display line is consistent with the appellants' specification, see for example pages 1 and 7 of appellants' specification. This definition also supports the examiner's assertion that resolution is a physical dimension of the monitor. Thus, while we agree with the examiner that the resolution of the monitor is a physical measurement of the monitor, in the context of claims 1 and 7 we do not find that the resolution of the monitor meets the claim limitation of physical size, as the claims also include limitations to resolution, and as such, make it clear that the physical size and resolution are different parameters. On page 1 of appellants' specification, appellants identify that monitors can be measured in inches and on page 6 appellants identify that the image can also be measured in inches. We find that in the limitation of "physical size" in claims 1 and 7 includes the size measured in units of length (e.g. inches) and not pixels (e.g. resolution).

[2] Taken from the Microsoft Press Computer dictionary 1991, a copy of which is attached to this decision.

Having determined the scope of the claims we next turn to the rejection asserted by the examiner. The Examiner asserts, on page 5 of the answer, that Moore teaches a system for determining the current resolution of the display, determining the physical size of the display and displaying an image at the desired physical size and that Harter teaches an embedded program to determine the current display resolution. As stated *supra* we find that the scope of claims 1 and 7 includes that the physical size be a size measured in units of length. We find that Moore teaches displaying an image at a desired size (see column 4, line 26-31, and lines 55-60), however, the size is measured in the number of pixels and not units of length. Further, we find that Harter teaches a program, which determines the resolution of the monitor on a client's computer (see column 3, lines 5-10). However, we find no teaching in either Harter or Moore of determining the physical size of the display being measured in units of length. Accordingly we will not sustain the examiner's rejection of claims 1, 7 and 8.

In summary we will not sustain the examiner's rejections under 35 U.S.C. § 103. Accordingly, we reverse the examiner's rejection of claims 1, 7, and 8.

REVERSED

MAHSHID D. SAADAT)
Administrative Patent Judge)
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ALLEN R. MACDONALD) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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